

ORDER NO. 92003

On May 4, 1992, this APPEALS PANEL rendered a decision in this case (Texas Workers' Compensation Commission Appeal No. 92115) reversing the decision of the Hearing Officer and remanding the case for certain record reconstruction and for further consideration not inconsistent with our opinion. According to a petition styled PETITION FOR WRIT OF MANDAMUS, received May 21, 1992, appellant asserts that the hearing officer, at a hearing called on May 19, 1992, on his own motion, requested the parties to agree to retain a medical expert to review the case and render an opinion, and further, that the hearing officer refused to render a decision and order as directed in the remand. The appellant argues that the hearing officer has no authority and no jurisdiction to appoint a medical officer under the circumstances of this case and should be compelled to render his decision on the record. In an amended petition styled AMENDED PETITION FOR WRIT OF MANDAMUS, received on May 29, 1992, the appellant indicates that the hearing officer issued a new order dated May 21, 1992, received by the appellant on May 26, 1992, by which he apparently abandoned his desire to have the parties agree to have another medical expert review the case. In his May 21, 1992 ORDER the hearing officer scheduled a hearing for June 5, 1992 and indicated the parties would have the opportunity to present evidence concerning two questions relating to stress and conditions of the deceased's work related activity. Appellant asserts the hearing officer has no jurisdiction to "re-open the record" and requests he be directed to file a new decision and order not inconsistent with this panel's decision of May 4, 1992. Appellant further requests the June 5 proceeding be abated. No responses have been filed to the appellant's petitions.

ORDER

Without assuming any authority to issue Writs of Mandamus under the statutory provisions which establish, and provide authority for, the Appeals Panel of the Texas Workers' Compensation Commission (Texas Workers' Compensation Act of 1989, TEX. REV. CIV. STAT. ANN. arts. 8308-6.02(g), 6.41, 6.42 (Vernon Supp 1992)) we have reviewed the matters submitted to determine if any extraordinary remedial action is necessary. It appears that the matter regarding the appointment of a medical expert is not being pursued and is therefore moot and not addressed in this order. We do not agree with the assertions that the hearing officer either lacks authority or jurisdiction to proceed as he determines necessary to effectuate the requirements of our reversal and remand. To do so would interfere with his authority and responsibilities under the provisions of Article 6.34(b) to "ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made." We did not by our reversal and remand truncate either the authority of the hearing officer or the provisions of Article 8308-6.42(b)(3) regarding development of evidence deemed necessary for the determinations to be made. While further development of evidence was not required by our decision, it was also not foreclosed.

Not finding good or sufficient cause or reason to disturb the May 21, 1992 order of the hearing officer scheduling a hearing for June 5, 1992, the relief requested is DENIED.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge